

December 27, 2024

VIA ECF

The Honorable Vince Chhabria, U.S.D.J.
San Francisco Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Smith-Washington, et al. v. TaxAct, Inc.*
Civil Action No. 3:23-CV-00830-VC

Your Honor:

We represent Defendant TaxAct, Inc. (“TaxAct”) and Plaintiffs in the above-referenced matter and are jointly submitting this letter to advise the Court regarding certain 2024 tax year time-sensitive matters currently affecting the preliminarily approved class and to request leave to file a revised proposed order granting final approval of class action settlement clarifying the proposed timing for TaxAct to deliver the in-kind relief (complimentary access to Xpert Assist) for tax year 2024 (calendar year 2025).

As set forth in the approval papers and presented at the settlement hearings, in addition to the cash component, the proposed settlement provides for in-kind relief in the form of complimentary access to Xpert Assist for the 2024 tax year for settlement class members who submitted valid claims forms. Dkt. No. 121-2 at ¶¶ 74-76; Dkt. No. 146 at 9. Xpert Assist is an add-on feature that TaxAct offers to its customers at an added cost that provides live advice and assistance from tax experts to customers completing a tax return with TaxAct. Dkt. No. 146 at 9. Generally, it is available for any of TaxAct’s online do-it-yourself consumer 1040 tax filing products, including TaxAct’s free federal return product. However, as part of the proposed settlement, settlement class members who submitted valid claims forms are entitled to this benefit at no charge for tax year 2024. *Id.* Respectfully, it is important to note that while the IRS does not typically open filing until sometime in mid-January, TaxAct customers are able to prepare their 2024 tax returns, enter payment, and place their return in a queue to be filed with the IRS as early as January 2, 2025. It is equally important to note that TaxAct customers are already able to access Xpert Assist, and this service will be available at no charge to the settlement class members only if and when the final settlement order is approved and entered by the Court. Until that time, settlement class members who have already started their tax year 2024 returns with TaxAct have access to Xpert Assist, but they will be charged for the service, like any other TaxAct customer, if they prepare, pay, and file their return prior to the Court ruling on final settlement approval. Certain class members have already added Xpert Assist to their in-process 2024 tax return.

The settlement negotiated between the parties intends for Xpert Assist to be available to eligible class members at no charge ***during the 2024 tax season.*** Dkt. No. 121-2 at ¶¶ 39, 61, 74

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& 76. The parties did not agree for complimentary Xpert Assist service to be available beyond the 2024 tax season for a variety of reasons. That intent is memorialized in the preliminary approval papers submitted to and approved by the Court. *E.g.*, Dkt. No. 121 at 7. For example, the notice of proposed settlement describes that eligible class members may receive “free use of TaxAct® Xpert Assist for your tax year 2024 return.” Dkt. No. 121-2 at Ex. C & D. However, the current proposed order (Dkt. No. 146-15) does not clearly describe that eligible settlement class members may access free Xpert Assist this upcoming 2024 tax season. Rather, it accounts for potential appeals in its description of future settlement administration dates and contemplates the possibility that the appeals may not be resolved prior to the start of the 2024 tax season. See Dkt. No. 146-15 at 7. The attached revised proposed order clarifies that eligible settlement class members may access free Xpert Assist ***this upcoming 2024 tax season***, as soon as the Court rules on final settlement approval.

Clarifying that benefits are applicable in calendar year 2025 for the 2024 tax season also addresses certain practical considerations. Providing the in-kind relief requires several months of preparation to ensure class members have a good experience, which is why the parties agreed to provide the service for tax year 2024. This included extensive logistical planning and technical support, coordination among software engineering, product development and the internal legal teams, and the hiring of additional credentialed tax experts to meet the anticipated increased usage of the service by class members. TaxAct’s provision of this complimentary service for tax season 2024, however, is dependent on a final ruling. Additionally, settlement class members who have started 2024 returns have already begun contacting TaxAct on how to access their free Xpert Assist service.

The operative filed proposed order (Dkt. No. 146-15) dates from when the settlement agreement was executed on February 21, 2024. The parties intended and agreed to make Xpert Assist available in tax season 2024 (calendar year 2025) because the parties understood that it was not feasible or practical to provide the settlement’s benefits to class members for tax season 2023 (calendar year 2024); instead, tax season 2024 would provide timely and full access for class members to the settlement’s benefits and account for the necessary legal and logistical steps to include Xpert Assist as part of the settlement. Further, because TaxAct sees regular customer turnover year to year, the largest number of eligible class members could benefit from the in-kind payment if it was made available in the immediate next tax year as contemplated in the settlement between the parties. Nevertheless, the Order as originally submitted provided that the Xpert Assist benefits would be provided the later of January 1, 2025 or the first day of tax filing after entry of final approval (*emphasis added*). Under this language, an unintended consequence could result in Xpert Assist not being available in calendar year 2025. For example, if the Court submitted its final approval on January 15, 2025 (and tax filing opened January 14, 2025), Xpert Assist would not be available until 2026, frustrating the benefit to the class, confusing the class members, and undermining the intent of the settlement. Consequently, the revised proposed Order (attached hereto), clarifies that Xpert Assist will be available for the tax year 2024 filing season (within five (5) business days after a final Order), and in line with the parties’ settlement agreement.

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For the reasons outlined above, we respectfully request this Court to grant leave to file a stipulated revised proposed order and to rule on the pending motion for final approval of the class action settlement.

Thank you for your consideration.

Respectfully submitted,

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FILER'S ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), regarding signatures, I, James W. Ducayet, attest that concurrence in the filing of this document has been obtained.

Dated: December 27, 2024

/s/ James W. Ducayet
James W. Ducayet